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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,262	01/29/2002	Christopher John Frogley	P2759	4074

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Chester E Flavin, Esq.
McCORMICK, PAULDING & HUBER LLP
City Place II
185 Asylum Street
Hartford, CT 06103-4102

EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N . 10/058,262	Applicant(s) FROGLEY, CHRISTOPHER JOHN	
	Examiner Jeffrey L. Gellner	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>translation of JP1-157315</u> . |

DETAILED ACTION

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, and 5-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over JP1-157315 in view of Edwards (US 3,543,438).

As to Claims 1 and 3, JP1-157315 discloses a growing medium (page 3, 1st para. of translation in English) comprising a self-supporting block ("molded product" of page 7, 1st para. of translation in English) formed from moss ("peat" of page 5, 1st para. of translation in English) bounded together by a binding material ("ethylene vinyl acetate" of page 6, last line, of translation in English) dispersed through (from "Blending a water-resistant emulsion-type adhesive into the peat so as to form spot adhesion" of page 5, 1st para., of translation in English), the binding material being a compatible adhesive and an adhesive in aqueous dispersion. Not disclosed is the moss being sphagnum moss. Edwards, however, discloses a growth block made of sphagnum moss (col. 3 line 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the moss of JP1-157315 by using sphagnum moss as disclosed by Edwards depending upon availability of source.

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As to Claims 5 and 8 (when dependent upon Claim 5), JP1-157315 as modified by Edwards further discloses fibrous material dispersed through the sphagnum moss (“wood shavings” of col. 3 lines 1-3; shredded bark defined as within the ambit of wood shavings).

As to Claims 6 and 7, JP1-157315 as modified by Edwards further discloses a fibrous material exterior coating (“cheese cloth fabric” of col. 2 line 67).

As to Claim 8, the limitations of Claim 7 are disclosed as described above. Not disclosed is the outer exterior shredded waste paper. However, because cheese cloth and shredded waste paper were art-recognized equivalents at the time of the invention in those growing media where the exact material used in the exterior coating was immaterial, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute shredded waste paper for cheese cloth in the growing medium of JP1-157315 as modified by Edwards.

Claim 4 is rejected under 35 U.S.C. §103(a) as being unpatentable over JP1-157315 in view of Edwards (US 3,543,438) in further view of Ball (US 4,414,776).

As to Claim 1, are disclosed as described above. Not disclosed is the binding material a botanical gum. Ball, however, discloses the use of several botanical gums (col. 3 lines 1-2) in a seed mat environment (abstract). Because EVA and botanical gum resins were art-recognized equivalents (see Ball at col. 3. line 6) at the time of the invention in growing media where it is immaterial as to the exact binding material, one of ordinary skill in the art at the time of invention would have found it obvious to substitute botanical gums for EVA as disclosed by Ball in the growing medium of JP1-157315 as modified by Edwards.

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Claim 14 is rejected under 35 U.S.C. §103(a) as being unpatentable over JP1-157315 in view of Edwards (US 3,543,438) in further view of Langezaal et al. (US 5,218,783).

As to Claim 14, the limitations of Claim 1-7 are disclosed as described above. Not disclosed is the growing medium in combination with a support tray, the support tray with one or more apertures adapted to receive the growing medium and being surrounded by solid white walls, the top and base of the apertures being open. Langezaal et al., however, discloses a support tray (5 of Fig. 2) in combination with the growing medium (11 of Fig. 2); the support tray with one or more apertures (9 of Fig. 2) adapted to receive the growing medium (Fig. 2) and being surrounded by solid white walls (walls solid white in Fig. 2), the top and base of the apertures being open, the tray with solid sidewalls and the top and bottom open (see Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the growing medium of JP1-157315 in view of Edwards (US 3,543,438) by using in combination with the support tray of Langezaal et al. so as to provide an easy means to carry a plurality of growing media at one time.

Response to Arguments

Applicant's arguments, of 3 December 2003, with respect to the rejection(s) of claim(s) 1, 3-8, and 14 under 112 1st paragraph have been fully considered and are persuasive because statement that "the adhesive inevitably must be dispersed right through the whole volume of sphagnum moss" of Remarks page 4, last paragraph. The rejection is withdrawn. Additionally, the rejection of all the claims under 35 USC 103 with Edward as the base reference has been

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withdrawn due to the fact that the adhesion is used in a different embodiment than the filaments dispersed through the bulk material as stated in the Remarks at page 5, paragraphs 4 and 5.

However, Examiner considers the rejections using JP1-157315 to be proper because the translation in English discloses a formed block with an adhesive throughout because of the language such as "blending" and "mixture" on page 2 Claim 1 of the translation in English. Both JP1-157315 and Edwards are concerned with formed plant growth blocks with adhesive so the combination is also proper. A copy of the JP1-157315 is provided to Applicant with this office action.

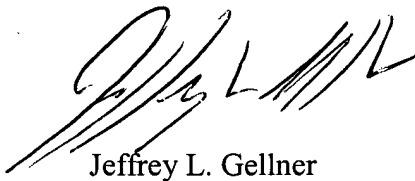
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP52-69706 disclose in the prior art a mixture of peat and an adhesive.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'Jeffrey L. Gellner', with a stylized, cursive script.

Jeffrey L. Gellner